

STATE OF MICHIGAN
COURT OF APPEALS

LYNN CLARK JANSON,

Plaintiff-Appellee,

v

JAN A. JANSON,

Defendant-Appellant,

and

ROBERT MIRQUE, SR.,

Defendant.

UNPUBLISHED

August 7, 2003

No. 236676

Kent Circuit Court

LC No. 01-002584-CZ

Before: Saad, P.J., and Meter and Owens, JJ.

PER CURIAM.

Defendant appeals by leave granted an order granting in part and denying in part her motion for summary disposition under MCR 2.116(C)(8). We reverse.

I. Facts and Procedural History

Plaintiff, Lynn Janson, and defendant, Jan Janson, were divorced in Kent Circuit Court on December 8, 1995. The divorce judgment provides that plaintiff will pay monthly spousal support to defendant, and that the payments are modifiable and shall terminate (1) if defendant lives with an unrelated male for more than thirty days, or (2) two years after defendant remarries. On May 24, 2000, plaintiff and defendant entered into a stipulation to amend the judgment of divorce. The stipulation states that plaintiff's spousal support obligation to defendant would terminate upon plaintiff's payment of a \$60,000 lump sum to defendant. On May 24, 2000, the trial court entered an order that amended the judgment of divorce and terminated plaintiff's spousal support obligation.

On March 13, 2001, plaintiff filed an independent action and sought money damages for fraud from defendant and Robert Mirque, Sr.¹ Plaintiff alleged that, in negotiating the \$60,000

¹ In her application for leave to appeal, defendant's only claim of error related to the fraud claim and this Court expressly "limited [the appeal] to the issues raised in the application."

lump sum spousal support payment in the underlying case, plaintiff's counsel inquired about defendant and Mirque's relationship, and they failed to disclose that defendant and Mirque were married on February 14, 2000, three months before the parties negotiated and entered the settlement.² In answer to plaintiff's complaint, defendant admitted that she and Mirque were married and she admitted that she did not disclose the marriage to plaintiff, but denied, incredibly, any "knowledge" that the marriage would affect the spousal support settlement negotiations, notwithstanding the fact that the divorce judgment explicitly states that spousal support payments shall terminate two years after defendant remarries.

On May 24, 2001, defendant moved for summary disposition under MCR 2.116(C)(8) and argued that plaintiff could not maintain an independent fraud action and that plaintiff instead should have moved to set aside the order that amended the 1995 judgment under MCR 2.612(C). The trial court denied defendant's motion on August 3, 2001, and, thereafter, this Court granted defendant's application for leave to appeal.

II. Analysis

Defendant argues that the trial court erred by denying her motion for summary disposition of plaintiff's fraud claim. We review de novo the trial court's grant or denial of summary disposition. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001).

Triplett v St Amour, 444 Mich 170; 507 NW2d 194 (1993) and its progeny control our decision on this point of law. Plaintiff may not seek money damages in an independent action for fraud in inducing a settlement; rather, plaintiff's remedy is to file a motion to reopen or request relief from the order amending the divorce judgment.

In *Triplett*, the plaintiffs brought an independent action for a fraudulently induced settlement agreement. *Id.* at 172. The plaintiffs argued that, in a prior tort case, Patricia St. Amour fraudulently concealed a preexisting shoulder condition in her attempt to collect for injuries she sustained in a car accident with one of the defendants. *Id.* at 173. In considering St. Amour's motion to dismiss in the independent fraud action, the four-justice majority of our Supreme Court concluded that the plaintiffs failed to state a claim on which relief could be granted. *Id.* at 179-180, 184. Because the court rules for relief from judgment, discovery sanctions, and sanctions for improperly signed documents "provide[d] effective remedies" to the plaintiff as the defrauded party, the majority declined to recognize an independent cause of action for fraud. *Id.* at 178-179.

In *Nederlander v Nederlander*, 205 Mich App 123; 517 NW2d 768 (1994), more than one year after a divorce judgment was entered, the plaintiff filed a new complaint and alleged that, during the divorce proceedings, the defendant misrepresented the value of one of his business interests. *Id.* at 124-125. Similar to plaintiff Janson, the plaintiff in *Nederlander* did

² Defendant and Mirque were married in Tennessee on February 14, 2000. However, Kent Circuit Judge Dennis Leiber entered an order of annulment December 28, 2000. The record indicates that defendant and Mirque were also married in a ceremony in Michigan on June 11, 2000. That marriage was annulled by an order dated December 15, 2000, and entered by Ingham Circuit Judge James Giddings.

not seek to reopen or set aside the divorce judgment, but instead brought an independent action to recover damages for fraud. *Id.* at 124. Relying on *Triplett, supra*, this Court held that plaintiff failed to state a recognized claim in Michigan. *Id.* at 126-127. As in *Triplett*, the Court ruled that, “[i]f a party suspects that the other party has committed fraud during a divorce proceeding, then MCR 2.612(C)(1)(c) and (2) allows the party to seek redress within one year after the judgment is entered.” *Id.*

This Court also relied on *Triplett* in *Sprague v Buhagiar*, 213 Mich App 310; 539 NW2d 587 (1995), in which the plaintiff filed a separate fraud action to rescind a land contract. In ruling that the plaintiff failed to state a viable claim, this Court noted that the plaintiff could have raised fraud and misrepresentation as a counterclaim in the underlying case. *Id.* at 313. This Court also concluded that, notwithstanding the general rule that fraud claims are excepted from the res judicata bar, the exception only applies to extrinsic fraud, not to cases involving intrinsic fraud,³ *including fraud in inducing a contract or settlement.* *Id.* at 314. The *Sprague* Court concluded that, because the plaintiff “alleges only intrinsic fraud in this case, she cannot seek relief by independent action. . . . There is not a separate cause of action. Plaintiff’s remedy is to move to reopen the judgment pursuant to MCR 2.612(C).” *Id.*

Finally, in *Daoud v De Leau*, 455 Mich 181; 565 NW2d 639 (1997), our Supreme Court reaffirmed its holding in *Triplett* and concluded that a party may not bring an independent fraud action for perjury committed during the underlying action because statutes and court rules provided a remedy in the underlying action. *Daoud, supra* at 203.

Here, our precedent compels our conclusion that plaintiff’s complaint does not state a cause of action. Rather than filing a motion under MCR 2.612(C) to set aside, modify or revisit the disputed order, plaintiff filed this independent action to recover damages for fraud in inducing the settlement agreement.⁴ Put simply, based on the authority set forth above, plaintiff should have sought redress for the alleged intrinsic fraud in the underlying case, rather than filing a new action.⁵ Plaintiff failed to state a claim on which relief can be granted and defendant is entitled to judgment as a matter of law.⁶

³ As the *Sprague* Court clarified:

Extrinsic fraud is fraud outside the facts of the case: “fraud which actually prevents the losing party from having an adversarial trial on a significant issue.” *Rogoski v Muskegon*, 107 Mich App 730, 736; 309 NW2d 718 (1981). An example of such fraud would be fraud with regard to filing a return of service.

Extrinsic fraud must be distinguished from intrinsic fraud, which is a fraud within the cause of action itself. An example of intrinsic fraud would be perjury, *id.* at 737, discovery fraud, fraud in inducing a settlement, or fraud in the inducement or execution of the underlying contract. [*Sprague, supra* at 313-314.]

⁴ Because the issue is not before us, we express no opinion regarding whether plaintiff may now pursue any particular avenue of relief in the first action.

⁵ To the extent the trial court relied on *Courtney v Feldstein*, 147 Mich App 70; 382 NW2d 734 (1986) to deny defendant’s motion for summary disposition, we note that it is not binding
(continued...)

Reversed.

/s/ Henry William Saad
/s/ Patrick M. Meter
/s/ Donald S. Owens

(...continued)

precedent because it was issued before November 1, 1990. MCR 7.215(J)(1). Moreover, our reading of *Triplett*, *Nederlander*, *Sprague* and *Daoud* leads us to conclude that *Courtney* is no longer controlling law.

⁶ Further, while the trial court expressed concern that plaintiff added Mirque as a defendant to the fraud action, this does not change our conclusion. The court rules provided plaintiff with an effective remedy in the underlying case. In *Daoud*, our Supreme Court declined to recognize a new cause of action for fraud notwithstanding that the plaintiff added defendants to the fraud action. Moreover, as defendant points out, it is possible to join a third party in a divorce action if there is an allegation of fraud. See *Berg v Berg*, 336 Mich 284, 288; 57 NW2d 889 (1953).